United States District Court Southern District of Texas

## **ENTERED**

February 26, 2025
Nathan Ochsner, Clerk

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

NIURKA MARIA GARCIA ANDRE,

Plaintiff,

vs.

CIVIL ACTION NO. H-23-01754

ELLAND C. DUDEK,

Acting Commissioner of the Social Security

Administration,

Defendant.

## ORDER ADOPTING MEMORANDUM AND RECOMMENDATION GRANTING THE PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

The court remanded this Social Security case for further administrative proceedings under sentence four of § 405(g) of the Social Security Act, 42 U.S.C. § 405(g). (Docket Entry Nos. 17, 18). The plaintiff filed an Application for Attorney's Fees Under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, requesting reimbursement of \$9,632.68 in fees for 42.85 hours of legal work performed in 2023 and 2024 at an hourly rate of \$224.80. (Docket Entry No. 22).

The court has reviewed the Memorandum and Recommendation of Judge Richard Bennett recommending granting the motion for attorney's fees. (Docket Entry No. 23). No objections have been filed. The Commissioner is unopposed to the fee award. (Docket Entry No. 24).

This court has made a *de novo* determination based on the motion, the response to plaintiff's motion, the record, and the applicable law, and adopts the Memorandum and

\_

Leland C. Dudek became the Acting Commissioner of Social Security in February 2025. Dudek is "automatically substituted" as the defendant in this suit. FED. R. CIV. P. 25(d); see also 42 U.S.C. § 405(g) ("Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.").

Recommendation as this court's Memorandum and Order. Fed R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989).

The plaintiff's motion for attorney's fees, (Docket Entry No. 22), is granted. The court finds that the appropriate hourly rate is \$224.80 for 2023 and 2024. The court further finds that the plaintiff's attorney is entitled to compensation for 42.85 hours of work in 2023 and 2024, for a total award of \$9,632.68.

The defendant must pay the plaintiff, Niurka Maria Garcia Andre, attorney's fees under the Equal Access to Justice Act in the amount of \$9,632.68. The defendant must make the check payable to Niurka Maria Garcia Andre and mail the check to the address of the plaintiff's attorney, Michael Kelly, at Morgan & Weisbrod, L.L.P., P.O. Box 821329, Dallas, Texas, 75382-1329. Payment is due no later than **April 4, 2025**.

SIGNED on February 26, 2025, at Houston, Texas.

Lee H. Rosenthal Senior United States District Judge

Lee N. Rosentha